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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/514,401	11/15/2004	Rolf Gueller	93316	4379

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EXAMINER	
NAGPAUL, JYOTI	
ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
08/04/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/514,401	GUELLER ET AL.	
	Examiner	Art Unit	
	JYOTI NAGPAUL	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Amendment filed on December 24, 2008 has been acknowledged. Claims 1-35 are pending.

Response to Amendment

Rejection of Claims 1-6, 8-10, 15-21 and 23-35 as being anticipated by Kawanishi (US 5894111) has been maintained in light of applicant's amendments.

Rejection of Claim 7 as being unpatentable over Kawanishi has been maintained in light of applicant's amendments.

Rejection of Claims 11-14 and 22 as being unpatentable over Kawanishi in view of Materna (US 2002/0084920) has been maintained in light of applicant's amendments.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-6, 8-10, 15-21 and 23-35** are rejected under 35 U.S.C. 102(b) as being anticipated by Kawanishi (US 5894111).

Kawanishi teaches a device for dosage of substances comprising a substance intake portion/storage cup (1) which comprises at least one substance compartment (2) for the intake of substance to be dosed. The device further comprises an emptying portion/container (10) and a weighing balance/load cell (7) for the determination of the quantity of dosed substance. The substance intake portion (1) further comprises a

plurality of substance compartments (3a-3d) that are individually emptiable. (See Col. 6, Lines 22-27) The device further comprises control means/computer the emptying of the substance compartments in a manner dependent on the quantity of does substances determined by means of the weighing/load cell (7). (See Col. 3, Lines 1-27) The substance intake portion/storage cup (1) comprises substance compartments (2 and 3a-3d) vary quantities of substances to be dosed and at least one are pre-filled with substance to be dosed and preferably sealed. (See Figure 1) The substance compartments (2 and 3a-3d) are storage cups therefore are formed by vertically arranged tubes and have different inner diameters. (See Figure 1) According to Figure 1, at least some of the tubes/storage cups have pointed or sharp-edged lower sections. With respect to Claim 10, applicants' recite "at least some of the tubes are pre-filled with substance to be dosed and preferably the two ends of the tubes are sealed with a foil". This is appears to be a process of making the product limitation which is of no patentable significance in apparatus claims. Kawanishi teaches each and every structural element as recited by applicant. Kawanishi further teaches that the substance intake portion/storage cup (1) is automatically removable from the emptying portion. The substance compartments (2 and 3a-3d) are capable of individually displaceable mounted between a fill position and a not fill position. The emptying portion (11) has means for the alteration of the geometry of every individual substance compartment, which preferably comprise means for the production of a mechanical pressure, a voltage or a temperature change.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawanishi.

Refer above for the teachings of Kawanishi.

Kawanishi fails to teach that the inner diameters of the tubes/storage cups are smaller than 5 mm.

The mere scaling down or changing of the dimensions of the tubes depends on the quantity desired to be dosed. It would have been obvious to one having ordinary skill in the art to provide the tubes of Kawanishi where inner diameters are smaller than 5 mm to achieve the predictable results of minimizing error in obtaining the quantity of substance desired for filling.

7. **Claims 11-14 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawanishi in view of Materna (US 2002/0084920).

Refer above for the teachings of Kawanishi.

Kawanishi fails to teach that at least some of the substance compartments have an inner surface with an arithmetic mean roughness value R larger than 0.5 and with different wettability.

Materna teaches different nozzles for dispensing liquids having wherein the nozzle has a low surface energy coating and/or nozzle geometry to provide wetting resistance. Materna teaches a nozzle with apparent hydrophicity due to surface tension by making a surface that is both rough and of low surface energy for obtaining or depositing the precise amount of quantity desired. (See paragraph [0086])

It would have been obvious to one having ordinary skill in the art to provide the tubes of Kawanishi where the inner surface with an arithmetic mean roughness value R larger than 0.5 and with different wettability to achieve the predictable results of obtaining or depositing the precise amount of quantity desired.

Response to Arguments

8. Applicant's arguments filed April 3, 2009 have been fully considered but they are not persuasive. Applicant's argue that Kawanishi's load cell does not measure the weight of the quantity of dosed substance but measure a gross weight of the substance to be dosed partially. Applicant's further argue that the gross weight of substance to be dosed partially does not normally correspond to the target weight. Applicants' do not claim either the target or gross weight and therefore the weight measured by the load cell of Kawanishi's is equivalent to the claimed measured dosed substance.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI NAGPAUL whose telephone number is (571)272-1273. The examiner can normally be reached on Monday thru Friday (10:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JN /Jill Warden/
Supervisory Patent Examiner, Art Unit 1797